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U.S. Department of Homeland Security
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U.S. Citizenship and Immigration Services

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PUBLIC COPY

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: FEB 02 2007

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IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability. The petitioner asserts that an exemption from the requirement of a job offer, and thus of an alien employment certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

On appeal, the petitioner responds to several of the director's concerns. For the reasons discussed below, the petitioner has not overcome the director's concerns.

Section 203(b) of the Act states in pertinent part that:

> (2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --
>
> > (A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
> >
> > (B) Waiver of Job Offer.
> >
> > > (i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirement of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

It appears from the record that the petitioner seeks classification as an alien of exceptional ability. This issue is moot, however, because the record establishes that the petitioner holds a Ph.D. in Organic Chemistry from the Shanghai Institute of Materia Medica. The petitioner's occupation falls within the pertinent regulatory definition of a profession. The petitioner thus qualifies as a member of the professions holding an advanced degree. The remaining issue is whether the petitioner has established that a waiver of the job offer requirement, and thus an alien employment certification, is in the national interest.

Neither the statute nor pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

> The Service believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dep't. of Transp., 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on *prospective* national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

We concur with the director that the petitioner works in an area of intrinsic merit, drug development, and that the proposed benefits of his work, new drugs for diseases such as Alzheimer's Disease, cancer and HIV/AIDS, would be national in scope. It remains, then, to determine whether the petitioner will benefit the national interest to a greater extent than an available U.S. worker with the same minimum qualifications.

In the request for additional evidence, the director requested evidence relating to a higher classification, aliens of extraordinary ability pursuant to section 203(b)(1)(A) of the Act. For example, the director requested evidence of awards, exclusive memberships and published material about the petitioner. Such documentation corresponds to the regulatory requirements for aliens of extraordinary ability, 8 C.F.R. §§ 204.5(h)(3)(i), (ii), and (iii) respectively. In the final decision,

however, the director no longer requires such evidence, focusing instead on the lack of evidence that the petitioner's work has influenced the field beyond his immediate circle of colleagues.

At the outset, we acknowledge that the petitioner submitted evidence of his memberships, including his post-filing membership in Sigma Xi. The letter from Dr. [redacted], Executive Director of Sigma Xi, reveals that Sigma Xi invites to full membership "those who have demonstrated noteworthy achievements in research." These achievements must be evidenced by "publications, patents, written reports or a thesis or dissertation, which must be available to the Committee on Admission if requested." Dr. [redacted] continues that the "Committee on Qualifications and Membership interpreted this qualification to include primary authorship of two papers." In addition, an earned doctoral degree may be substituted for one paper. We cannot conclude that primary authorship of one or two papers is evidence of the petitioner's influence in the field. Moreover, one of the criteria for aliens of exceptional ability, a classification that normally requires a labor certification, is membership in a professional association. We cannot conclude that meeting one criterion, or even the requisite three criteria, for that classification warrants a waiver of the job offer requirement in the national interest. *Matter of New York State Dep't of Transp.*, 22 I&N Dec. at 222. Regardless, as the petitioner was elected to membership after the date of filing, it is not evidence of his eligibility as of that date. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak,* 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

Eligibility for the waiver must rest with the alien's own qualifications rather than with the position sought. In other words, we generally do not accept the argument that a given project is so important that any alien qualified to work on this project must also qualify for a national interest waiver. *Matter of New York State Dep't of Transp.*, 22 I&N Dec. at 218. Moreover, it cannot suffice to state that the alien possesses useful skills, or a "unique background." Special or unusual knowledge or training does not inherently meet the national interest threshold. The issue of whether similarly-trained workers are available in the United States is an issue under the jurisdiction of the Department of Labor. *Id.* at 221.

At issue is whether this petitioner's contributions in the field are of such unusual significance that the petitioner merits the special benefit of a national interest waiver, over and above the visa classification he seeks. By seeking an extra benefit, the petitioner assumes an extra burden of proof. A petitioner must demonstrate a past history of achievement with some degree of influence on the field as a whole. *Id.* at 219, n. 6. In evaluating the petitioner's achievements, we note that original innovation, such as demonstrated by a patent, is insufficient by itself. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Id.* at 221, n. 7.

As stated above, the petitioner obtained his Ph.D. in 1999 from the Shanghai Institute of Materia Medica. The petitioner then worked as a research associate at the School of Pharmacy, University of Wisconsin until August 2001. The petitioner left Wisconsin for the [redacted] Institute in Minnesota and remained there as of the date of filing. The petitioner is currently working at the University of Illinois at Chicago.

The petitioner submits several reference letters discussing his work at the above institutions. Citizenship and Immigration Services (CIS) may, in its discretion, use as advisory opinions statements submitted as expert testimony. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm. 1988). However, CIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; CIS may evaluate the content of those letters as to whether they support the alien's eligibility. *See id.* at 795-796. CIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; *See also Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

In evaluating the reference letters, we note that letters containing mere assertions of industry interest and positive response in the field are less persuasive than letters that provide specific examples of how the petitioner has influenced the field. In addition, letters from independent references who were previously aware of the petitioner through his reputation and who have applied his work are far more persuasive than letters from independent references who were not previously aware of the petitioner and are merely responding to a solicitation to review the petitioner's curriculum vitae and work and provide an opinion based solely on this review.

At the Shanghai Institute of Materia Medica, the petitioner worked on synthesizing Huperzine A, an extract from a Chinese herb that has acetylcholinesterase (AChE) inhibitor properties useful in treating Alzheimer's Disease. The petitioner worked under the supervision of Dr. [redacted]. Dr. [redacted] explains that Huperzine A has a complex structure, making it difficult to synthesize in a laboratory. According to Dr. [redacted]i, the petitioner was able to obtain "by far the highest ee [(enantiomeric excess)] % in the world and successfully completed the asymmetric total synthesis of (-)-huperzine A."

Dr. [redacted] Director of Combinatorial Chemistry at deCODE [redacted], asserts that he became aware of the petitioner's work through his articles and has contacted the petitioner "for some experiment details." Dr. [redacted]g asserts that the previous highest recorded ee percentage for asymmetric bridgecycle construction was only 64 percent and that the petitioner obtained a 90.5 percent ee, high enough to have top pharmaceutical value. Dr. [redacted], Associate Director of the National Prion Disease Pathology Surveillance Center, provides similar information. Neither Dr. [redacted] provides an example of a pharmaceutical company actually manufacturing the petitioner's version of synthetic Huperzine A or have expressed an interest in doing so.

Professor D. [redacted]s, a professor at the University of Johannesburg, asserts that while he has not met the petitioner, he has read the petitioner's articles and cited one of them. Dr. [redacted]s asserts that the petitioner's use of new types of chiral ligands to synthesize Huperzine A "should provide improvements in other protocols where these ligands are applied." In his article, Dr [redacted]s cites the petitioner as one of six studies using palladium-medium allylic substitution reactions employed in producing different types of products.

Dr. [redacted] notes that the petitioner's work on Huperzine A led to three articles in top journals and asserts that these articles have been cited "a lot." Dr. [redacted] further states that the second article reported the results of a collaboration with "a world renowned structure biologist, Dr. [redacted]" Two of the petitioner's articles on this subject had been cited as of the date of filing.

The petitioner's 2001 article on this subject had been cited four times as of the date of filing, including one self-citation by Dr. [redacted]. As of the petitioner's response to the director's request for additional evidence, nine articles had cited this article, including two self-citations. Significantly, however, the petitioner's article was typically included as one of several articles cited for a single proposition. Curiously, in 2003, Dr. [redacted] Trost cited the petitioner's article as an example of a "recent effort with new ligands [that] utilized the same nucleophile and electrophile and ultimately led to the highest levels of enantioselectivity." In a subsequent article published in 2005, however, Dr. [redacted] cited the same article by the petitioner as one of "a handful of examples [that] have been subsequently disclosed with similar poor results." [redacted] cited the petitioner's article as one of 16 reporting prepared analogues of Huperzine A. [redacted] cited the petitioner's article as one of several using one of two methods for asymmetrical synthesis, but concluded that "no protocol was satisfactory for preparing (-)-huperzine A yet."

The petitioner's 2002 article coauthored with Dr. [redacted] which lists the petitioner as the seventh of eleven authors, had been cited four times as of the date of filing, including two self-citations by Dr. [redacted] and Dr. [redacted]. In response to the director's request for additional evidence, the petitioner submitted evidence that this article had been cited 10 times, including five self-citations. The petitioner has not demonstrated that this number of citations is remarkable.

In addition to his work on Huperzine A, the petitioner is also listed as an inventor on a patent application for the preparation process for a hypertension and benign prostatic hyperplasia medicine. As stated above, an alien cannot secure a national interest waiver simply by demonstrating that he or she holds a patent. Whether the specific innovation serves the national interest must be decided on a case-by-case basis. *Matter of New York State Dep't. of Transp.*, 22 I&N Dec. at 221, n. 7. The record contains no evidence that any pharmaceutical company has expressed any interest in licensing the petitioner's process for this drug.

Dr. [redacted], formerly a visiting professor at the University of Wisconsin-Madison, discusses the petitioner's work at that institution. Dr. [redacted] asserts that the petitioner demonstrated that Horseradish Peroxidase can be used in Vancomycin synthesis. While Dr. [redacted] asserts that this work "is crucial to the development of new drugs and disease treatments," he provides no examples of how this work has already proven influential. We note that the petitioner has not published or presented the results of the work he performed at the University of Wisconsin-Madison.

At the Parker Hughes Institute, the petitioner collaborated with Dr. [redacted] Dr. [redacted] explains that the petitioner worked on three projects: Stampidine metabolites identification, d4t prodrugs design and synthesis and anti-cancer drug development. Dr.

Venkatachalam asserts that Stampidine is "a promising new anti-HIV drug developed at Parker Hughes Institute" and is much more potent than the commonly used drug Stavudine. Dr. [redacted] asserts that the petitioner's work on this project "will strongly support the application for its clinical trial from FDA." Another collaborator on this project, Dr. [redacted] provides similar information, expanding on the complexities involved based on the number of potential metabolites. Dr. [redacted] notes that their manuscript reporting their results was accepted without revision.

[redacted] Associate Editor of *Drug Metabolism and Disposition*, asserts that the journal's acceptance of the petitioner's article on Stampidine represents a significant accomplishment by the petitioner. Mr. [redacted] continues:

> [The petitioner's research not only identified the structure of the phase II metabolite, but also illustrated the important hydrolysis mechanism of Stampidine. Importantly, his paper prompts the development of new anti-HIV drugs that have similar metabolism with Stampidine. This paper has been recognized as significant for HIV drug discovery and has been cited eight times by top-ranking journals.

We will not presume the influence of a given article from the journal in which it appeared. The petitioner submitted nine articles that cite the petitioner's article in *Drug Metabolism and Disposition*, at least three of which postdate the filing of the petition. As noted by the director, all of these citations are self-citations by Dr. [redacted]. On appeal, the petitioner asserts that the reason this work has yet to be cited by independent research teams is that the Parker Hughes Institute is the only research laboratory investigating Stampidine. It can still be expected that significant work limited to one institution will garner attention beyond that institution even if the institution is the sole location of that work. The record contains no evidence that the general, health or science media have acknowledged the significance of the petitioner's work on Stampidine or even Stampidine's potential as an HIV drug.

The record does contain a letter from Dr. [redacted], a research scientist with the International Agency for Research on Cancer (IARC) within the World Health Organization, asserting that the petitioner's research on Stampidine, a potential HIV drug, has implications for the anti-cancer drug HPV-16. Dr. [redacted] asserts that their work on HPV-16 "could never go so far without [the petitioner's] discoveries." The record, however, lacks IARC reports or articles citing the petitioner's Stampidine research as relevant to HPV-16.

Dr. [redacted], Director of the Structural Biology and Computational Chemistry Department at the Parker Hughes Institute, asserts that the petitioner also focused on BTK, SYK and PLK, drug targets proposed by the institute and currently the focus of research by pharmaceutical companies. Specifically, these targets have the potential to become the next generation of chemical-sensitizers or modulators to alleviate resistance to current cancer drugs. According to Dr. [redacted], the petitioner "has successfully designed and synthesized a number of novel lead compounds that have demonstrated potency against a panel of drug-resistant cancer cell lines. As acknowledged by Dr. [redacted], however, this work had yet to be published as of the date of filing.

Dr. [redacted], a former staff scientist at the Parker Hughes Institute, asserts that their collaboration revealed a series of novel compounds targeting a novel target with a novel binding mode. Dr. [redacted] asserts that this discovery will likely lead to novel drugs with potent anti-tumor activity. Dr. [redacted] does not indicate, however, that this work has been presented or published. Thus, it has yet to be subject to peer-review. While Dr. [redacted] implies that the petitioner's participation is necessary to further this project, the petitioner is currently at the University of Illinois at Chicago pursuing tuberculosis drugs. While Dr. [redacted] also left the Parker Hughes Institute for the University of Illinois at Chicago, the record does not establish that he and the petitioner are still collaborating on cancer drugs. The petitioner's work on tuberculosis postdates the filing of the petition and cannot be considered. *See* 8 C.F.R. § 103.2(b)(12); *Matter of Katigbak,* 14 I&N Dec. at 49.

Dr. [redacted], a project officer at the National Cancer Institute, asserts that the petitioner is "about to make a breakthrough in anti-cancer research." Dr. [redacted], however, does not assert that this work has already proven influential.

While the petitioner's research is no doubt of value, it can be argued that any research must be shown to be original and present some benefit if it is to receive funding and attention from the scientific community. Any research, in order to be accepted for graduation, publication or funding, must offer new and useful information to the pool of knowledge. It does not follow that every researcher who performs original research that adds to the general pool of knowledge inherently serves the national interest to an extent that justifies a waiver of the job offer requirement.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved alien employment certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by an alien employment certification certified by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.